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HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: **HON'BLE MR. VIJAY KUMAR SHRIVASTAVA & HON'BLE MR. DHIRENDRA MISHRA, JJ**

MISCELLANEOUS APPEAL NO.105 OF 2007

APPELLANTS

1. A. Babu Rao, son of Jagannath Naidu, aged 48 years.
2. Smt. Laxmi, wifeof A. Babu Rao, aged 41 years.
3. Ku. Jaya, daughter of A. Babu Rao, aged 22 years.

All residents of New Khursipar, Bhilai-12, P.S. Chawni, Behind Soap Factory, Tehsil & District Durg (C.G.)

Vs.

RESPONDENTS

1. Harish Chandra, son of Firanta Ram, aged 32 years, resident of Shivaji Nagar, New Khursipar, Bhilai, P.S. Chawni, Tehsil & District Durg (C.G.)
2. Sukhvinder Singh, son of Mangal Singh, resident of Shop NO.45, Sector-5, Bhilai Nagar, Teh. & Distt. Durg.
3. Divisional Manager, National Insurance Company Ltd., Branch Office Supela, Bhilai, Teh. & Distt. Durg.

Present : Mr. Amiyakant Tiwari, learned counsel for the appellants.

ORAL ORDER

(Passed on 29th January, 2007)

Following oral order of the Court was passed by **Vijay Kumar Shrivastava, J**:

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This appeal under Section 173 of the Motor Vehicles Act, 1988 (henceforth "the Act, 1988") has been preferred against award dated 1.9.2006 passed by the 12th Additional Motor Accident Claims Tribunal, Durg (henceforth "the Tribunal") in Claim Case No.60/05 whereby a compensation of Rs.4,36,500/- has been awarded in favour of the appellants, feeling aggrieved this appeal for enhancement of compensation amount.

2. On 14.2.2005, when A. Shekhar Rao (since deceased) was going in his motorcycle bearing registration number C.G.07/4136, he met an accident with vehicle bearing registration number CG07-ZC-2117. The driver of the offending vehicle was respondent No.1, owner of it was respondent No.2 and it was insured with respondent No.3. A. Shekhar Rao sustained injuries and succumbed to it. Appellants No.1 to 3, who are father, mother and sister of deceased respectively, filed an application under Section 166 of the Act, 1988 for compensation. Vehicle owner-respondent No.2 remained ex-parte and others contested the claim.

3. After evaluating the evidence, learned Tribunal awarded the compensation as below:-

1. Loss of dependency	:	Rs.4,32,000/-
2. Funeral expenses	:	Rs. 2,000/-
3. Loss of affection	:	Rs. 2,500/-
Total	:	**Rs.4,36,500/-**

4. Learned counsel for the appellants contended that learned Tribunal has committed error by fixing notional income of deceased as against legal evidence available on record to prove it. He further contended that the Tribunal has also committed error by deducting 1/3rd of deceased's income towards his own expenses.

5. Admittedly, the employer to establish the income of deceased has not been examined. One certificate i.e. Ex.P-10 was obtained after the incident but that was also not proved by any legal evidence. Despite that learned Tribunal accepting the evidence that deceased was working in Jain Trading Company allowed his monthly income as Rs.3,000/- and after deducting 1/3rd of the income of deceased, as his expenses, assessed annual dependency Rs.24,000/-. Learned Tribunal applied multiplier of 18 and assessed total dependency Rs.4,32,000/-. Here pertinent to mention that claimants are father, mother and one adult sister, therefore in such circumstances, the age of

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deceased is irrelevant for selecting multiplier. In absence of any objection or appeal at this juncture we are not inclined to adjudge and declare the correct multiplier. When income of the deceased was not established by cogent evidence and learned Tribunal very fairly allowed the income of deceased, a person who was educated only upto 10th standard, as Rs.3,000/- per month, that cannot be said to be illegal. So far deduction of 1/3rd of income made by the Tribunal on deceased's own expenses is concerned, that in facts and circumstances of the case appears to be just and reasonable. Finding of facts recorded by the Tribunal regarding dependency and 1/3rd deduction does not appear to be illegal or perverse, which may call for any interference.

6. No other points have been raised during the course of arguments.

7. In the result, the appeal being devoid of substance is dismissed in limine.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-